No. 6175

In the

United States Circuit Court of Appeals

For the Ninth Circuit

AMANDO DIDENTI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Brief of Appellee

Upon Appeal from the United States District Court for the Western District of Washington, Southern Division

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STATEMENT OF THE CASE

The appellant Amando Didenti, and two others, John Huggler and Jack Esara, were charged by indictment with conspiring together and "with sundry and divers other persons to the grand jurors unknown," to violate the National Prohibition Act (Tr. p. 2). After a trial, the jury acquitted Huggler and Esara, but convicted the appellant. (Tr. p. 7.)

After the verdict was rendered, the appellant interposed a motion in arrest of judgment on the ground that he could not, alone, be guilty of conspiracy. (Tr. p. 10.)

The evidence introduced in the trial of the case showed that three Federal Prohibition agents could detect odor of fermenting mash at a distance from the location of the still in question which was on the premises of John Huggler on East 64th Street, Tacoma, Washington, and upon examination the officers found the still not in operation.

Jack Esara and John Huggler entered the still-house and were there for about ten minutes, and were arrested when they started to leave. The agents then waited about an hour, and the appellant drove up to the still-house in a Chrysler sedan which contained

400 lbs. cerolose sugar; 400 lbs. Argo corn sugar; three 10-gallon kegs, and 50 lbs. of yeast. (Tr. p. 11.) Appellant was placed under arrest at this time.

Federal agents further testified that they did not know about Guarrazino Guarrazi in connection with this still until after the indictment in this case was returned. (Tr. p. 12.)

The testimony showed that on or about July 29, 1929, Guarrazi hired Esara to operate the still for $150.00 a month. On August 2, 1929, the appellant went to Esara's house and took him in his car to the place where the still was located. (Tr. p. 15.)

Appellant testified that on the 2nd day of August, 1929, one Joe Pinsitti arranged for appellant to take the material found in the car at the time of the arrest to the address where the still was. He further testified that Joe Pinsitti had told him to take Jack Esara to the same place where he was arrested that evening (Tr. p. 13); that he had received $7.50 in advance, and he delivered the articles mentioned when he was through his work at eight o'clock. (Tr. p. 14.)

APPELLANT'S ASSIGNMENTS OF ERROR

I

The lower court erred in refusing to direct a verdict of acquittal in favor of the appellant.

II

The lower court erred in refusing to grant the appellant's motion for a new trial.

III

The lower court erred in denying appellant's motion in arrest of judgment interposed after the jury had acquitted all of his co-conspirators.

IV

The lower court erred in sentencing the appellant to serve a term of eight months in the county jail of Pierce County, Washington.

ARGUMENT

I

Appellant had driven Esara to the still, and that same evening had hauled a load of supplies, not reasonably suited for any purpose other than distilling.

"It is well understood that a conspiracy is rarely proved by direct evidence; that it is unuslly established by proof of facts and circumstances from

which its existence is inferred. If the inference is a natural and reasonable one, it is sufficient support for the finding of a conspiracy. Jelke v. United States (C. C. A.) 255 Fed. 264, 280; Applebaum v. United States (C. C. A.), 274 Fed. 43, 46."

Anstess v. United States, 22 Fed. (2nd) 594.

The case of *Pattis v. United States,* 17 Fed. (2nd) 562, cited by appellant, supports the United States in this case.

II

In subdivision II of appellant's argument, he contends that because two other named conspirators were acquitted, appellant's conviction cannot stand, on the ground that one person cannot be guilty of the crime of conspiracy. The cases cited by appellant are not in point.

Bartkus v. United States, 21 Fed. (2nd) 425, merely holds that one person cannot commit a crime of conspiracy.

United States v. Austin, 31 Fed. (2nd) 229, holds that the conviction of conspiracy of only one defendant cannot be sustained if *all* other principal conspirators are acquitted.

In *Feder v. United States*, 257 Fed. 694, the indictment did not allege that the defendants conspired with sundry and divers other persons to the grand jurors unknown, and hence is not in point.

In *Browne v. United States*, 145 Fed. 1, it was held that where two persons on trial for conspiracy had been found guilty, it was not error to refuse a new trial to one of the defendants and grant it to the other.

In this case, the appellant was charged with sundry and divers other persons to the grand jurors unknown, and the evidence introduced in the trial of the case showed that touching the averment as to divers and sundry other persons to the grand jurors unknown, the Government agents did not know of the connection of Guarrazi with the case until after the indictment was returned. So that, notwithstanding the acquittal of Esara and Huggler, the evidence was ample to establish a conspiracy between appellant and Guarrazi, and by appellant's own testimony, with Joe Pinsitti.

The case of *Anstess v. United States*, 22 Fed. (2nd) 594, is exactly in point. In that case plaintiff in error was found guilty upon an indicament charging him and one Raymond Johnston, and other persons whose names were unknown, with conspiring to unlawfully transport and sell intoxicating liquor. Johnson was acquitted. On page 595, the Court said:

"And, further, if the evidence warrants a finding that plaintiff in error conspired with a person not named as a defendant, it is sufficient."

It is respectfully submitted that the judgment should be affirmed.

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